

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DERRICK PEARSON,	)	
	)	
Plaintiffs,	)	2:04-CV-0942-BES-RJJ
	)	
vs.	)	
	)	
RICK BISHOP, CLARK COUNTY,	)	REPORT & RECOMMENDATION
	)	OF UNITED STATES
Defendant,	)	<u>MAGISTRATE JUDGE</u>
	)	

This matter was referred to the undersigned Magistrate Judge on Defendant's Motion for Attorney Fees (#61).

The Court having reviewed the Motion (#61) and the file herein makes the following findings:

1. Defendant's Motion for Attorney Fees (#61) was referred to the undersigned Magistrate Judge Dec. 8, 2006. Minute Order Referring Motion (#62).
2. On February 28, 2007, the Court ordered the defendants to personally serve a copy of the Motion (#61) on the Plaintiff, ordered proof of service to be filed with the Court and granted Plaintiff 20 days from the date of service to file a response. Order (#64).
3. On March 7, 2007, Defendant filed a Certificate of Mailing (#65) indicating service by the United States Postal Service, first class mail.

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1           4.     On April 20, 2007, Defendant filed a Motion to Request to Attribute Failure of  
2                 Plaintiff to Respond to Defendant's Motion for Attorney's Fees as Consent to the  
3                 Granting of Said Motion Pursuant to LR 7-2(d) (#66).

4           5.     On May 20, 2007, the Court entered an Order (#67) denying Defendants' Motion  
5                 (#66) for failure to effect personal service of the motion on the Plaintiff. *See*,  
6                 Order (#67).

7           6.     The Order (#67) further directed Defendants' to personally serve Plaintiff with a  
8                 copy of the Motion for Attorney's Fees (#61) and a copy of the Order. *See*, Order  
9                 (#67) at pg. 2, lines 3-5.

10          7.     On July 2, 2007, Defendants' Affidavit of Service on Motion for Attorney Fees  
11                 (#68) was filed with the Court.

12          7.     No response has been filed by the Plaintiff. However, Defendants' Affidavit of  
13                 Service demonstrates service of Defendants' Motion for Attorney's Fees, but does  
14                 not show service of the Court's Order as required by Order (#67). *See*, Affidavit  
15                 of Service at pg. 2, lines 3-12.

16                 In light of Defendants failure to give notice of the Court's Order (#67) and good cause  
17     appearing therefore,

18                                 **RECOMMENDATION**


19                 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that Defendant's  
20     Motion for Attorney Fees (#61) be **DENIED**.

21                                 **NOTICE**

22                 Pursuant to Local Rule IB 3-2 [former LR 510-2] any **objection to this Report and**  
23     **Recommendation must be in writing and filed with the Clerk of the Court on or before**  
24     **September 26, 2007**. The Supreme Court has held that the courts of appeal may determine that  
25     an appeal has been waived due to the failure to file objections within the specified time. Thomas  
26     v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has also held that  
27     (1) failure to file objections within the specified time and (2) failure to properly address and brief  
28     the objectionable issues waives the right to appeal the District Court's order and/or appeal factual

1 issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Britt  
2 v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

3 DATED this 18th day of September, 2007.

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7 ROBERT J. JOHNSTON  
United States Magistrate Judge  
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